

BROOKLYN OFFICE

10-CV-4077 (ARR) (VVP)

NOT FOR ELECTRONIC
OR PRINT PUBLICATION

ORDER

Defendants.

Plaintiff and defendant Daniel Kim previously filed cross-motions for summary judgment. Dkt. #179, 193. In an opinion and order dated July 25, 2014, this court denied plaintiff's motion for summary judgment, and granted in part and deferred in part defendant Kim's motion for summary judgment. Dkt. #202. That order also stated that the court deferred decision on plaintiff's motion for default judgment against non-appearing defendant Yogi's II, Inc. until all claims against defendant Kim had been resolved.

However, in fact, plaintiff's motion for default judgment against defendant Yogi's II is no longer pending and has already been denied. Plaintiff filed a motion for entry of default against both defendants on November 14, 2010. Dkt. #2. Defendant Kim filed a motion to set aside the default. Dkt. #14. On March 7, 2011, Magistrate Judge Viktor V. Pohorelsky issued a Report and Recommendation in which he recommended that plaintiff's request for a default judgment against defendant Yogi's II be denied due to "serious questions as to the validity of service on Yogi's II." Dkt. #31 at 3. Judge Pohorelsky also recommended granting defendant Kim's motion to set aside the default as to him. Id. at 6. On March 7, 2011, this court issued an order adopting Judge Pohorelsky's report and recommendation in its entirety, and, accordingly,

denying plaintiff's motion for default judgment. Dkt. #34.

Therefore, the July 25, 2014 opinion and order is hereby amended to remove the reference to plaintiff's motion for default judgment against defendant Yogi's II. The court does not defer decision on plaintiff's motion for default judgment against defendant Yogi's II because that motion has already been denied. As per agreement of the parties at a conference held today, the only defendant currently in this suit is Kim.

In an opinion and order dated August 13, 2014, this court denied plaintiff leave to amend its complaint against defendant Kim, granted defendant Kim's motion for summary judgment, and dismissed the complaint against Kim in its entirety. The order also stated that, to the extent that plaintiff seeks to assert claims against defendant Yogi's II, plaintiff must serve an amended pleading on Yogi's II, and plaintiff must obtain a new certificate of default before moving for default judgment against Yogi's II.

Accordingly, pursuant to the August 13 order granting summary judgment to Kim, the only defendant currently in this action, the Clerk of Court is directed to enter judgment dismissing the complaint against defendant Kim in its entirety and close the case.

SO ORDERED.

/s/(ARR)

Allyne R. Ross
United States District Judge

Dated: August 21, 2014
Brooklyn, New York